

REVENUE DEPARTMENT[701]

Notice of Intended Action

Twenty-five interested persons, a governmental subdivision, an agency or association of 25 or more persons may demand an oral presentation hereon as provided in Iowa Code section 17A.4(1)"b."

Notice is also given to the public that the Administrative Rules Review Committee may, on its own motion or on written request by any individual or group, review this proposed action under section 17A.8(6) at a regular or special meeting where the public or interested persons may be heard.

Pursuant to the authority of Iowa Code chapter 17A and section 421.14, the Department of Revenue hereby gives Notice of Intended Action to amend Chapter 11, "Administration," Iowa Administrative Code.

This amendment to rule 701—11.10(422) is intended to implement Iowa Code section 423.35. The amendment serves several purposes, primarily to explain and enhance in several ways the department's current bonding requirement for delinquent sales tax permit holders. The amendment changes the bonding requirement to an optional action. The amendment clarifies that the term "delinquencies" applies to both timely payment of the sales tax and timely filing of the sales tax return. The amendment describes the Department's current practice of applying the bond toward any outstanding tax liability of the permit holder. The amendment allows sales tax permit holders who have maintained a good filing record for a period of two years to request a return of the bond; in addition, the amendment allows the Department to return the bond to the sales tax permit holder without a formal request. Finally, the amendment serves the secondary purpose of changing outdated references from Iowa Code chapter 422 to Iowa Code chapter 423.

The proposed amendment will not necessitate additional expenditures by political subdivisions or agencies and entities which contract with political subdivisions.

Any person who believes that the application of the discretionary provisions of this amendment would result in hardship or injustice to that person may petition the Department for a waiver of the discretionary provisions, if any.

The Department has determined that this proposed amendment may have an impact on small business. The Department has considered the factors listed in Iowa Code section 17A.4A. The Department will issue a regulatory analysis as provided in Iowa Code section 17A.4A if a written request is filed by delivery or by mailing postmarked no later than December 8, 2008, to the Policy Section, Taxpayer Services and Policy Division, Department of Revenue, Hoover State Office Building, P.O. Box 10457, Des Moines, Iowa 50306. The request may be made by the Administrative Rules Review Committee, the Administrative Rules Coordinator, at least 25 persons signing that request who each qualify as a small business or an organization representing at least 25 such persons.

Any interested person may make written suggestions or comments on this proposed amendment on or before November 25, 2008. Such written comments should be directed to the Policy Section, Taxpayer Services and Policy Division, Department of Revenue, Hoover State Office Building, P.O. Box 10457, Des Moines, Iowa 50306.

Persons who want to convey their views orally should contact the Policy Section, Taxpayer Services and Policy Division, Department of Revenue, at (515)281-8036 or at the Department of Revenue offices on the fourth floor of the Hoover State Office Building.

Requests for a public hearing must be received by November 26, 2008.

This amendment is intended to implement Iowa Code section 423.35.

The following amendment is proposed.

Amend rule 701—11.10(422) as follows:

701—11.10(~~422~~ 423) Bonding procedure. The director may, when necessary and advisable in order to secure the collection of the tax, require any person subject to the tax to file with the department a bond in

an amount as the director may fix, or in lieu of the bond, securities approved by the director in an amount as the director may prescribe. Pursuant to the statutory authorization in Iowa Code section ~~422.52(3)~~ 423.35, the director has determined that the following procedures will be instituted with regard to bonds:

11.10(1) When required.

a. *Classes of business.* When the director determines, based on departmental records, other state or federal agency statistics or current economic conditions, that certain segments of the business community are experiencing above average financial failures such that the collection of the tax might be jeopardized, a bond or security ~~will~~ may be required from every retailer operating a business within this class unless it is shown to the director's satisfaction that a particular retailer within a designated class is solvent and that the retailer previously timely remitted the tax. If the director selects certain classes of business for posting a bond or security, rule making will be initiated to reflect a listing of the classes in the rules.

b. *New applications for sales tax permits.* Notwithstanding the provisions of paragraph "a" above, an applicant for a new sales tax permit ~~will~~ may be required to post a bond or security if (1) it is determined upon a complete investigation of the applicant's financial status that the applicant would be unable to timely remit the tax, or (2) the new applicant held a permit for a prior business and the remittance record of the tax under the prior permit falls within one of the conditions in paragraph "c" below, or (3) the department experienced collection problems while the applicant was engaged in business under the prior permit, or (4) the applicant is substantially similar to a person who would have been required to post a bond under the guidelines as set forth in paragraph "c" or the person had a previous sales tax permit which has been revoked. The applicant is "substantially similar" to the extent that said applicant is owned or controlled by persons who owned or controlled the previous permit holder. For example, X, a corporation, had a previous sales tax permit revoked. X is dissolved and its shareholders create a new corporation, Y, which applies for a sales tax permit. The persons or stockholders who controlled X now control Y. Therefore, Y will be requested to post a bond or security.

c. *Existing permit holders.* Existing permit holders ~~shall~~ may be required to post a bond or security under the following circumstances:

(1) ~~when~~ When they have had one or more delinquencies in remitting the sales tax or filing timely returns during the last 24 months if filing returns on an annual basis ~~or~~.

(2) ~~when~~ When they have had two or more delinquencies in remitting the sales tax or filing timely returns during the last 24 months if filing returns on a quarterly basis ~~or~~.

(3) When they have had four or more delinquencies in remitting the sales tax or filing timely deposits or returns during the last 24 months if filing returns on a monthly basis ~~or~~.

(4) When they have had eight or more delinquencies during the last 24 months if filing returns on a semimonthly basis.

The simultaneous late filing of the return and the late payment of the tax will count as one delinquency. See rule 701—13.7(422). However, the late filing of the return or the late payment of the tax will not count as a delinquency if the permit holder can satisfy one of the conditions set forth in Iowa Code section 421.27.

d. ~~Waiver~~ Return of bond. If a permit holder has been required to post a bond or security or if an applicant for a permit has been required to post a bond or security, upon the filing of the bond or security if the permit holder maintains a good filing record for a period of two years, the permit holder may request that the department ~~waive return~~ the continued bond or security requirement. The department may elect to return the bond without a request from the permit holder.

e. Applying bond. The department may apply a bond to any existing tax liability of the permit holder at its discretion.

11.10(2) Type of security or bond. When it is determined that a permit holder or applicant for a sales tax permit is required to post collateral to secure the collection of the sales tax, the following types of collateral will be considered as sufficient: cash, surety bonds, securities or certificates of deposit. "Cash" means guaranteed funds including, but not limited to, the following: (1) cashier's check, (2) money order or (3) certified check. If cash is posted as a bond, the bond will not be considered filed until the final payment is made, if paid in installments. A certificate of deposit must have a maturity date of 24 months from the date of assignment to the department. An acknowledgement of assignment from the bank must

accompany the original certificate of deposit filed with the department. When a permit holder elects to post cash rather than a certificate of deposit as a bond, conversion to certificate of deposit will not be allowed. When the permit holder is a corporation, an officer of the corporation may assume personal liability as security for the payment of the sales tax. The officer will be evaluated as provided in ~~(4)~~ above subrule 11.10(1) as if the officer applied for a sales tax permit as an individual.

11.10(3) *Amount of bond or security.* When it is determined that a permit holder or applicant for a sales tax permit is required to post a bond or securities, the following guidelines will be used to determine the amount of the bond, unless the facts warrant a greater amount: If the permit holder or applicant will be or is a semimonthly depositor, a bond or securities in an amount sufficient to cover three months' sales tax liability will be required. If the permit holder or applicant will be or is a monthly depositor, a bond or securities in an amount sufficient to cover five months' sales tax liability will be required. If the applicant or permit holder will be or is a quarterly filer, the bond or securities which will be required is an amount sufficient to cover nine months or three quarters of tax liability. If the applicant or permit holder will be or is an annual filer, the bond or securities which will be required would be in the amount of one year's tax liability. The department does not accept bonds for less than \$100. If the bond amount is calculated to be less than \$100, a \$100 bond is required.

This rule is intended to implement Iowa Code section ~~422.52~~ 423.35.